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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1813

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL NO. 10, PETITIONER

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

No. 73-1924

JAMES R. MUNIZ AND BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS LOCAL NO. 70, IBTCHWA, PETITIONERS

v.

ROY O. HOFFMAN, DIRECTOR, REGION 20, NATIONAL LABOR RELATIONS BOARD

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. i–xvi)[1] is reported at 492 F. 2d 929. The district

[1] "Pet. App." refers to the appendix to the petition in No. 73-1813. "R." refers to the Clerk's Record, comprising volumes

court's Order and Adjudication in Civil Contempt (R. 1197–1205), Findings of Fact and Conclusions of Law re: Civil Contempt Proceedings (R. 1308–1321), Order and Adjudication in Criminal Contempt (R. 1194–1196), Findings of Fact and Conclusions of Law re: Criminal Contempt Proceedings (R. 1249–1262), Judgment Imposing Fines and Penalties in re: Criminal Contempt (Tr. 2727–2736), and Order re: Reimbursement of Costs and Expenses (R. 1460–1464) are set forth respectively in Appendices A through F, *infra*, pp. 1a–53a.

JURISDICTION

The judgment of the court of appeals was entered on January 25, 1974, and amended on March 7, 1974. Petitions for rehearing and rehearing *en banc* were denied on March 26, 1974 (Pet. App. xvii–xviii). The petition in No. 73–1813 was filed on June 1, 1974, and in No. 73–1924 on June 24, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. The petition in No. 73–1813 presents these questions:

(a) Whether the district court properly found that petitioner Local 10 had actual notice of and was bound by the outstanding injunctions.[2]

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1 through 6 of the record in the court of appeals. "Tr." refers to the Reporter's Transcript, comprising volumes 7 through 28 of that record. "Exh." refers to the exhibits introduced in evidence in the district court.

[2] The petition in No. 73–1924 presents a similar question (Pet. 2, question 1).

(b) Whether the district court applied the proper standard of proof in finding petitioner Local 10 in civil contempt of the injunctions.

2. The petition in No. 73–1924 presents these additional questions:

(a) Whether the injunctions prohibited the conduct found to be contumacious.

(b) Whether 18 U.S.C. 3692 requires a jury trial in a proceeding to adjudge a union and its officers in criminal contempt for having violated injunctions issued by the district court pursuant to Section 10(*l*) of the National Labor Relations Act.

(c) Whether a jury trial was constitutionally required in order to subject the unions to the fines for criminal contempt imposed in this case.

STATUTES INVOLVED

The relevant statutory provisions are set forth in the petition in Nos. 73–1924, pp. 3–4, and in Appendix G, *infra,* pp. 54a–57a.

STATEMENT

A. THE INJUNCTION ORDERS OF FEBRUARY 13 AND APRIL 28, 1970

California Newspapers, Inc., doing business as the Independent Journal (Journal), publishes a daily newspaper of general circulation in Marin County, California. In January 1970, San Francisco Typographical Union Local 21 (Local 21) commenced picketing the Journal's San Rafael, California, publishing plant (Pet. App. ii–iii). On February 11, 1970, the National Labor Relations Board's Regional Direc-

tor, pursuant to a charge filed by the Journal, petitioned the district court under Section 10(*l*) of the National Labor Relations Act for a temporary injunction against Local 21 and Locals 85 and 287 of the Teamsters (Locals 85 and 287). The petition alleged that the named respondents were engaging in a prohibited secondary boycott by, *inter alia,* picketing to induce employees at the Port of San Francisco to refuse to work, with an object of forcing their employers to cease doing business with the Journal (Pet. App. iii).

On the same date, February 11, the district court issued a Temporary Restraining Order and Order to Show Cause (Court Exh. 5), enjoining Local 21, its "officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them or any of them * * * until February 13, 1970 at 5:00 p.m. and not longer without the further order of this Court, from * * * continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco." Specifically, the order enjoined them, *inter alia,* from:

> (b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect * * * INDUCING OR ENCOURAGING any individual employed by Garden City Transportation Company, Ltd., or by any motor carrier or other person engaged in commerce or in an industry, affecting commerce (other than Jour-

> nal), TO ENGAGE IN, a strike, slowdown or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or in any such or similar manner or by any other means, * * * THREATENING, COERCING OR RESTRAINING said employers, or any other person engaged in commerce or in an industry affecting commerce (other than Journal)—where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; * * *.

The order further directed all of the respondents named in the petition to show cause on February 13, why they should not be enjoined as requested in the petition pending the final disposition of the unfair labor practice case by the Board.

On February 13, 1970, a deputy United States Marshal served a certified copy of the Temporary Restraining Order and Order to Show Cause upon petitioner Longshoremen's Union Local 10 (Local 10) by leaving it with the person in charge of Local 10's office at 400 North Point Street, San Francisco, California (Tr. 973–975; Pet. Exh. 121).[3] On the same

[3] Local 10 is the collective bargaining representative of longshore employees at the Port of San Francisco, where the picketing and related conduct took place. In its annual report filed with the United States Department of Labor (Pet. Exh. 121), Local 10 designated its North Point Street Office as its address for receiving official mail, without specifying that such mail be sent in care of any particular official or person.

day, after a hearing, the district court entered a temporary injunction, pending a final disposition by the Board, enjoining all of the named respondents (Locals 21, 85, and 287), their agents, and all other labor organizations acting in concert or participation with them from engaging in the conduct specified in the temporary restraining order which had been served upon Local 10 (R. 426–429).

On April 28, 1970, the Regional Director filed a second petition for a Section 10(*l*) injunction against Local 21, based on charges filed by the Journal and the Emporium-Capwell Corporation. They alleged that Local 21 was further violating Section 8(b)(4)(B) of the Act by picketing and distributing handbills appealing to the public not to patronize various retail stores because they were advertising in the Journal. On the same date, Local 21 consented to the entry of an order as requested in the petition (R. 439–441), enjoining "Local 21 * * * and all members, persons and labor organizations acting in concert or participation with it, * * * pending the final disposition of the matters here involved pending before the [Board] * * *," from engaging in the charged unlawful conduct at the picketed stores or at the premises of other stores advertising in the Journal, or from:

> Threatening, coercing or restraining [the named firms] or any other firm advertising in the Independent Journal, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in the Independent-Journal newspaper or to cease doing business with [the Journal].

Local 21 gave extensive publicity to the injunction and to a subsequent civil contempt proceeding against it.[4] They were the subject of several articles in the "Strike Bulletin" periodically published by Local 21 and distributed to its members. Local 21 made clear to its membership that, with the assistance of Bay area unions such as the Teamsters and the Longshoremen, it would continue to picket and campaign against firms which traded with the Journal, regardless of whether such activity violated the outstanding injunctions. (Tr 2292, 2299; Pet. Exh. 213, 214, 215, 216.)

B. THE PRESENT CONTEMPT PROCEEDINGS

1. The procedure followed by the district court

On October 19, 1970, the Board's Regional Director filed with the district court a petition (R. 459–476), supported by affidavits (R. 477–695), to adjudge Locals 21 and 10, and Teamsters Locals 70 and 85, and certain of their officials, including petitioner Muniz, president of petitioner Local 70, in civil and criminal contempt for their failure to obey the injunctions entered by the district court on February 13 and

[4] Notwithstanding the consent injunction, Local 21 continued to engage in substantially the same picketing. On June 24, 1970, the district court found Local 21 and four of its officials in civil contempt by reason of their refusal to comply with the order. The adjudication (except as to two officials not involved here) and the Board's subsequent decision in the unfair labor practice case, finding that Local 21 had violated Section 8(b)(4)(B) of the Act by its picketing before and after the issuance of the injunction (*San Francisco Typographical Union No. 21 (California Newspapers, Inc. and Emporium-Capwell Corp.)*, 188 NLRB 673), were affirmed by the court of appeals. 465 F. 2d 53 (C.A. 9).

April 28, 1970. The petition charged that the respondents, acting in furtherance of a joint venture, had committed at least 28 violations of the outstanding injunctions. The district court ordered the named respondents to show cause why they should not be adjudged in civil and criminal contempt, and subsequently heard argument on certain preliminary matters, including motions by the respondents for severance of the civil and criminal contempt proceedings, and for a jury trial in the criminal contempt proceeding.

The court denied the motion for a jury trial. Respecting severance, it ruled that it would hear the criminal contempt charge first under the rules of evidence applicable to such proceedings, that the evidence there would be deemed part of the record in the subsequent civil contempt proceeding, and that in the latter proceeding it would receive any additional evidence which the parties might offer which would be admissible in a civil contempt proceeding (Tr. 106–107, 115).

The district court heard testimony on the contempt petition between November 3 and December 15, 1970, when the Board completed the presentation of its case. The Board introduced no evidence on the civil contempt beyond that introduced with respect to the criminal contempt. Respondents participated fully in the contempt proceedings, cross-examined Board witnesses and presented argument on the evidence and the law: however, petitioners Local 70, Muniz, and Local 10 declined to present any evidence (Tr. 2609–2615).

Pursuant to its ruling at the outset of the hearing, the court held that the record in the criminal contempt proceeding would be considered as part of the record in the civil contempt proceeding; the parties agreed that the latter record stood as "submitted * * * for purposes of passing on the issue of civil contempt * * *" (Tr. 2640-2641).

After the district court rendered its judgment, finding all respondents to be in both civil and criminal contempt, Local 10 contended that it had not rested its case as to the civil contempt (Tr. 2646). The court thereupon set aside the adjudication in civil contempt and reopened the matter to receive further evidence (Tr. 2742). All of the respondents except Local 10 declined to submit additional evidence (Tr. 2742, 2750). The court received in evidence an affidavit by the President of Local 10 stating in substance that he had no knowledge of the outstanding injunctions until after the alleged contumacious conduct (Tr. 2749; R. 1230). The court then reaffirmed the adjudication of civil contempt as to all respondents.

2. The district court's findings and orders

The district court found, with respect to the allegations of both civil and criminal contempt, that all of the respondents "[o]n or about, or prior to October 7, 1970 * * * embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms advertising in the Jour-

nal or to firms doing business with the Journal" (Apps. B, D, *infra*, pp. 13a, 31a); that "in furtherance and support of their aforesaid joint plan, program and campaign" they engaged in numerous acts of picketing, oral inducement of work stoppages, threats and harassment (*id.* at 13a–19a, 31a–37a); and that by such acts and conduct they induced and encouraged employees of retail stores and other picketed firms to engage in work stoppages, and "threatened, coerced and restrained" the firms, with the object of forcing them to cease advertising in the Journal or otherwise doing business with the Journal or each other, and forcing their customers and suppliers to cease doing business with them (*id.* at 19a–20a, 37a–39a).[5]

[5] Respondents' widespread campaign of picketing, threats, harassment, and oral inducement of neutral employees to engage in work stoppages, resulted in a largely successful effort to "quarantine" Marin County and its more than 200,000 inhabitants, by shutting off deliveries of foodstuffs and other goods (Tr. 2055, 2298–2299; Pet. Exh. 216). Although the campaign was initially organized by Local 21 (R. 480–485), much of the picketing and related conduct was committed by agents and members of Teamsters Locals 70 and 85. In particular, Local 70 president Muniz and his counterpart, Local 85 business manager Richardson, worked closely together throughout the campaign (see, *e.g.*, R. 485–486, 496–497, 639–642). Moreover, in October 1970, Local 10 announced in its official publication, "Longshoremen's Bulletin," that "The AFL-CIO, ILWU, Teamsters, United Farmworkers * * * are making a joint effort to set up formal picket lines outside of Companies that advertise in the Independent Journal"; it solicited the help of its members (Tr. 2497–2500; Pet. Exh. 175). On October 16, 1970, Local 10 transported its members and those of the Seafarers' Union to Marin County, where they picketed retail stores (Tr. 2497–2500; Pet. Exh. 175. See also R. 545, 563–564, 588, 716;

The court also found that the respondents "at all times material herein * * * had notice and knowledge of [the injunctions]" (*id.* at 12a, 30a) and adjudged all of them in civil contempt "by reason of their disobedience of and resistance to, and their failure and refusal to comply with," those orders (App. A, *infra*, pp. 2a–3a). It also adjudged Locals 21, 85, and 70, and certain of the individual respondents (Muniz, Richardson, and Local 21 organizer Abrams) "in criminal contempt of this Court by reason of their wilful disobedience of and resistance to, and their wilful failure and refusal to comply with" the two injunction orders (Apps. C, D, *infra*, pp. 24a–25a, 39a–40a). The court emphasized that it failed to find Local 10 and Local 21 vice president DeMartini in criminal contempt solely because the proof of their involvement in the contumacious conduct fell short of demonstrating the wilfulness required of criminal, as opposed to civil, contempt (Tr. 2639).

With respect to the civil contempt, the district court directed all respondents to purge themselves of such contempt by taking certain affirmative action, including compliance with the injunctions and posting of notices. The court also imposed a fine of $7,500 for each day that a respondent union, and $100

Tr. 985, 995–997, 1025, 1126, 1129–1130, 2022, 2250; Pet. Exhs. 180, 181).

Local 21 organizer Abrams, reporting to the membership on the boycott campaign, praised the "support * * * we are receiving from * * * 'ILWU, whose leadership and participation have been absolutely outstanding' and the 'mighty Teamster organization, * * * with accolades to * * * Jim Muniz and Tim Richardson'" (Tr. 2063–2064; Pet. Exh. 225).

for each day that an individual respondent, failed to comply with these orders.

With respect to the criminal contempt, the court, after considering a pre-sentence report submitted by the Regional Director and the arguments of counsel, ordered each of the unions (Locals 21, 85, and 70) to pay a fine of $25,000, subject to the qualification that payment of $15,000 of that amount would be suspended for one year and remitted to the union upon a determination by the court that it had not further violated the injunctions. The court placed the individual respondents (Muniz, Richardson, and Abrams) on probation for one year, with the understanding that if they engaged in any further violations of the injunctions they would be subject to a sentence of imprisonment of not more than six months. (App. E, *infra*, pp. 43a–46a.) The court rejected the unions' contention that they could not be fined more than $500 without a jury trial (App. E, *infra*, pp. 46a–47a).

3. The decision of the court of appeals

The court of appeals affirmed the judgments of civil and criminal contempt (Pet. App. vi). The court found that "the evidence, which was voluminous, * * * clearly justified and supported the [district] court's findings as to both criminal and civil contempts," that "[t]he language of the injunctions was abundantly sufficient," and that respondents and their attorneys were "fully apprised of the charges," but "deliberately chose to risk not to obey them" (Pet. App. vi–vii).

The court also held that the respondents were not entitled to a jury trial in the criminal contempt proceedings (Pet. App. ix–xvi).

ARGUMENT

1. Petitioners' contention (Local 10 Pet. 18–19; Local 70 and Muniz Pet. 10–13) that they did not have "actual notice" of the injunction orders was properly resolved against them by the district court, whose findings the court of appeals affirmed. It has long been settled "that one who knowingly aids, abets, assists, or acts in active concert with, a person who has been enjoined in violating an injunction subjects himself to civil as well as criminal proceedings for contempt even though he was not named or served with process in the suit in which the injunction was issued or even served with a copy of the injunction." *Reich* v. *United States,* 239 F. 2d 134, 137 (C.A. 1), certiorari denied, 352 U.S. 1004. See also *Regal Knitwear Co.* v. *National Labor Relations Board,* 324 U.S. 9, 13–14; *McGraw-Edison Co.* v. *Preformed Line Products Co.,* 362 F. 2d 339, 344 (C.A. 9), certiorari denied, 385 U.S. 919. The law is equally settled that the elements of civil and criminal contempt, including knowledge of the injunction order, may be established by circumstantial evidence. *Walker* v. *City of Birmingham,* 388 U.S. 307, 312, n. 4.

Local 85, with respect to the February 13 injunction, and Local 21 with respect to both injunctions, were parties to the proceeding with full knowledge of the injunction orders. The district court properly found that knowledge of the injunction orders by

Local 70 and its president Muniz could be inferred "beyond a reasonable doubt" from the close collaboration between Muniz and agent Richardson of Local 85, which repeatedly manifested itself throughout the secondary boycott campaign (n. 5, *supra*). As the court stated in sentencing the respondents, "it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other labor unions, didn't know about the order affecting one of his kindred teamster unions" (Tr. 2728; App. E, *infra*, p. 42a). The court's finding was further supported by Local 21's widespread and repeated publicity concerning the injunction orders and the evidence of close cooperation between Local 21 and the other unions (*supra*, pp. 7, 10–11).[6]

Similarly, the district court was warranted in finding that Local 10 had knowledge of the injunctions. It was served with a copy of the temporary restraining order and the order to show cause in that proceeding (*supra*, p. 5).[7] This put Local 10 on notice that Local 21 and all other unions acting with it were enjoined, at least until February 13, 1970, from engag-

[6] Under established principles, evidence of general discussion of a matter, or the likelihood of such discussion, within all or part of a group, supports an inference of knowledge of that matter by a member of that group. 2 Wigmore, *Evidence*, §§ 245, 261, pp. 43, 83–84, (3d ed., 1940) cited with approval in *State* v. *Costa*, 11 N.J. 239, 94 A. 2d 303.

[7] The orders having been served upon the person in charge of Local 10's office, the district court could properly discredit the denial of Local 10's president (*supra*, p. 9) and find that they came to the attention of responsible union officials.

ing in secondary boycott activity in furtherance of the Journal strike, and that it was possible that the injunction would be continued after the hearing on February 13. In these circumstances, Local 10 was under an obligation to inquire whether any "further order of the court" had been entered before engaging in a self-admitted "joint effort to set up formal picket lines outside of Companies that advertise in the Independent Journal" (n. 5, *supra*). Moreover, as with Local 70, Local 10's close cooperation with Local 21 and the latter's widespread and repeated publicity concerning the injunctions makes it reasonable to infer that Local 10 was aware of them.

2. There is no substance to Local 10's contention (Pet. 9–18) that the district court used an erroneous standard of proof in finding it guilty of civil contempt. In its December 24, 1970, adjudication in civil contempt, the court found that the allegations of the petition had been proven "by a preponderance of the evidence" (App. A, *infra*, p. 2a), and in its adjudication in criminal contempt, entered the same day, it found that the allegations of the petition had been proven "beyond a reasonable doubt" as to all respondents except Local 10 and Local 21 vice president DeMartini (App. C, *infra*, p. 24a). The court's subsequent findings as to civil and criminal contempt were identical in all respects except one: the court found that the extent of the involvement of Local 10 and DeMartini fell short of demonstrating the wilfulness which is an element only of criminal, not civil contempt (Tr. 2639; compare App. B, *infra*, pp. 21a–

22a with App. D, *infra*, pp. 39a–40a). All the elements of civil contempt were thus established by the same evidence which proved the criminal contempt; and, since the latter was proved "beyond a reasonable doubt," it follows that the civil contempt was likewise established by that same high standard.

3. There is likewise no merit in the contention of Local 70 and its agent, Muniz (Pet. 13–18), that the injunctions did not prohibit the conduct found to be contumacious—the inducement of suppliers and delivery drivers. The injunction of February 13, 1970, expressly prohibited Locals 21 and 85, and "all members, persons or other labor organizations acting in concert or participation with them," from "threatening, coercing or restraining * * * employers * * * (other than Journal)" and from "engaging in, or * * * inducing * * * any individual employed by * * * any person engaged in commerce * * * to engage in, a strike * * * or refusal * * * to perform any service * * * where * * * an object thereof is: (1) to force * * * any * * * person to cease doing business with Journal" (*supra*, pp. 4–5). The February 13 order thus barred, in furtherance of the Journal strike, any conduct proscribed by Section 8(b)(4)(B) of the Act, including the inducement of work stoppages by the employees of neutral, secondary employers.

To be sure, the immediate secondary boycott conduct which was the subject of the February 1970 injunction proceeding occurred at the Port of San Francisco. But the scope of the order was not limited geographically, nor can any such limita-

tion properly be read into it. The injunction was binding upon respondents "in relation to the prohibited conduct * * * throughout the United States" and contempt of that order "lay in the fact, not in the place, of the disobedience to the requirement." *Leman* v. *Krentler-Arnold Co.*, 284 U.S. 448, 451–452.

The injunction of April 28, 1970 (*supra*, p. 6), expressly prohibited Local 21, and all unions and persons acting with it, from "threatening, coercing or restraining" any firm advertising in the Journal, "by consumer picketing or by any like or related acts or conduct," in order to compel that firm to cease doing business with the Journal. Although the order contains no express reference to inducement or encouragement of employee work stoppages, it is well settled that picketing at the premises of a secondary employer, for the purpose of causing an interference with deliveries or supplies, constitutes an obvious form of coercion and restraint of that employer proscribed by Section 8(b)(4)(B) of the Act. *National Maritime Union of America* v. *National Labor Relations Board*, 346 F. 2d 411, 413–414 (C.A.D.C.); *National Labor Relations Board* v. *District Council of Painters*, #48, 340 F. 2d 107, 111 (C.A. 9). Accordingly, by prohibiting consumer picketing to force a cessation of business with the Journal and any related conduct for that same object, the April 28 injunction also forbade the picketing by Local 70, which took place both at consumer and loading entrances to the stores.

4. Local 70 and Muniz contend (Pet. 18–24) that under 18 U.S.C. 3692 they were entitled to a jury trial of the criminal contempt. The court of appeals re-

jected this argument on the ground that that provision applies only to contempt proceedings arising from injunctions issued in private litigation subject to the Norris-LaGuardia Act (Pet. App. viii–x). This conclusion is in accord with the views of most other courts of appeals,[8] and, as we show below, is correct.

18 U.S.C. 3692 provides in relevant part:

> In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

With the exception of the words used to describe the type of contempt under consideration, this language is virtually identical to that of Section 11 of

[8] *Madden* v. *Grain Elevator, Flour & Feed Mill Workers*, 334 F. 2d 1014, 1020 (C.A. 7), certiorari denied, 379 U.S. 967; *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostook Railroad Co.*, 380 F. 2d 570, 579–580 (C.A.D.C.), certiorari denied, 389 U.S. 327; *National Labor Relations Board* v. *Red Arrow Freight Lines*, 193 F. 2d 979, 980 (C.A. 5). See also, *United States* v. *Robinson*, 449 F. 2d 925, 931–932 (C.A. 9); *Schauffler* v. *Local 1291, International Longshoremen's Ass'n*, 189 F. Supp. 737 (E.D. Pa.), reversed on other grounds, 292 F. 2d 182 (C.A. 3). In *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n, Local 1291*, 368 F. 2d 932, 934 (C.A. 3), reversed on other grounds, 389 U.S. 64, relied upon by petitioners (Pet. No. 73–1924, p. 22), the court was not required to consider the present question, for the case involved a civil contempt proceeding for failure to comply with an order decreeing specific performance of a bargaining agreement—a matter which the court found did not "involve or grow out of a labor dispute."

the Norris-LaGuardia Act (App. G, *infra*, pp. 56a–57a), which was repealed when the revised Title 18 was enacted.[9] The change in language from Section 11, which covered "all cases arising under this Act," to Section 3692's inclusion of "all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute" did not alter the scope of the statute. For in transferring the provision from the context of labor disputes to the Criminal Code, Congress had to define its scope in terms which would limit its applicability to situations of the sort covered by the Norris-LaGuardia Act.[10] That Section 3692 was merely intended to codify Section 11 in the federal Criminal Code is confirmed by the Reviser's Notes which state that Section 3692 is "based on" Section 11 of the Norris-LaGuardia Act. H. Rep. No. 304, 80th Cong., 1st Sess., A176.

Consequently, Section 3692 is no more applicable to proceedings under the National Labor Relations Act than is the Norris-LaGuardia Act.[11] Section 10(h) of

[9] See Public Law 80–772, Section 21, 62 Stat. 866.

[10] The preamble of the Norris-LaGuardia Act states that "[n]o court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute," except in the narrowly defined class of cases thereafter described. Sections 4, 5, 7, 9, and 10 of the Norris-LaGuardia Act, in turn, define their scope in terms of injunctive relief in a "case involving or growing out of any labor dispute." 29 U.S.C. 101, *et seq.*

[11] This conclusion is confirmed by the debates on the jury trial provision of the Civil Rights Act of 1957 (Sec. 151, 71

the National Labor Relations Act expressly provides that, when "granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, * * * the jurisdiction of courts sitting in equity shall not be limited by the [Norris-LaGuardia] Act." As a result of this provision, proceedings under Section 10(*l*) of the National Labor Relations Act are excluded from the Norris-LaGuardia Act. See *Bakery Sales Drivers Union* v. *Wagshal*, 333 U.S. 437, 442; *Building and Construction Trades Council* v. *Alpert*, 302 F. 2d 594, 596–599 (C.A. 1). And, if the injunction suit is beyond the scope of the Norris-LaGuardia Act, a proceeding to obtain compliance with the injunction should be similarly excepted, since the latter proceeding is simply "a continuance of the earlier [Section 10(*l*)] action" and is the final "step in the enforcement" of the Section 10(*l*) order. National *Labor Relations Board* v. *Hopwood Retinning Co.*, 104 F. 2d 302, 305 (C.A. 2).[12]

Recently, however, the Court of Appeals for the

Stat. 638, 42 U.S.C. 1995). At that time, the view was repeatedly expressed that 18 U.S.C. 3692 was not applicable to suits brought by the government because it merely incorporated Section 11 of the Norris-LaGuardia Act. It was also noted that the National Labor Relations Act contained a specific exemption from the provisions of the Norris-LaGuardia Act. See 103 Cong. Rec. 8682–8687 (Congressman Celler); 8688–8691 (Congressman Keating); 12842–12843 (Attorney General Brownell).

[12] Congress was aware that the Norris-LaGuardia Act would be inapplicable to Section 10(*l*) proceedings. An alternative to Section 10(*l*) was proposed in the Senate which would have given private parties, rather than the Board, access to federal district courts to seek orders of the type Section 10(*l*) au-

First Circuit, in *Union Nacional de Trabajadores*, No. 74–1073, Original, decided August 14, 1974 (Supp. Pet. App. i–xviii) held that 18 U.S.C. 3692 requires a jury trial in a criminal contempt proceeding based on the defendants' alleged disobedience of a district court's order pursuant to Section 10(j) of the Act, which permits the Board, after issuance of an unfair labor practice complaint, to obtain a temporary injunction against the conduct alleged in the complaint. Although that case involved an injunction issued under Section 10(j), while the injunction in this case is under Section 10(*l*), both cases turn on the applicability of 18 U.S.C. 3692 to criminal contempts of labor injunctions to which the Norris-LaGuardia Act is not in terms applicable. The decision of the Court of Appeals for the First Circuit on this issue conflicts with that of the Court of Appeals for the Ninth Circuit in the present case. Because the issue is important in labor law, we believe that the Court should resolve the conflict.

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thorizes. See S. Rept. No. 105, 80th Cong., 1st Sess. 54–56 (Supplemental Views), 93 Cong. Rec. 4834–4847; Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948), 460–461, 1347–1370. An argument urged in its favor was that the proposed measure retained "in effect the provisions of sections 11 and 12" and "section 7, exclusive of clauses (c) and (e) of the Norris-LaGuardia Act," whereas "when the regional attorney of the NLRB seeks an injunction the Norris-LaGuardia Act is completely suspended, as are sections 6 and 20 of the Clayton Act." 93 Cong. Rec. 4834–4835, S. Rep. No. 105, 80th Cong., 1st Sess., 55 (Supplemental Views); Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948), 1348, 461. Congress rejected the proposal, concluding that adequate protection against abuse of the injunctive remedy was provided by permitting only the Board to seek it.

5. Local 70 further contends (Pet. 24–27) that the fine imposed on it for criminal contempt—$25,000, with $15,000 suspended for one year and subject to remission if there were no subsequent violations of the injunctions—was so serious a penalty that a jury trial was constitutionally required. In *Cheff* v. *Schnackenberg*, 384 U.S. 373, this Court, exercising its supervisory power over the federal courts, ruled that a federal court may impose a sentence for criminal contempt exceeding six months' imprisonment only after a jury trial or if a jury is waived.[13] However, neither in *Cheff*, nor in subsequent decisions[14] considering the propriety of penalties imposed without a jury trial, has the Court indicated that a jury trial is required where a fine in excess of $500 was imposed. Indeed, the Court has consistently declined to review criminal

[13] The Court indicated that it was guided in part by 18 U.S.C. 1(3), which provides that "[a]ny misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense."

[14] Thus, in *Bloom* v. *Illinois*, 391 U.S. 194 (state court adjudication in criminal contempt), and *Duncan* v. *Louisiana*, 391 U.S. 145 (state court conviction for a misdemeanor), the Court held that the sentences imposed—two years' imprisonment—involved such an impairment of personal liberty as to warrant classification of the offenses in question as "serious" rather than "petty," and thus to require a jury trial. Cf. *Dyke* v. *Taylor Implement Co.*, 391 U.S. 216 (jury trial not required where six-month jail sentence was imposed for criminal contempt). In *Frank* v. *United States*, 395 U.S. 147, the Court held, by analogy to 18 U.S.C. 3651, which authorizes the federal courts to suspend sentence and place on probation for a period of up to five years persons convicted of petty offenses, that a comparable penalty

contempt proceedings in which fines in excess of $500 were levied without a jury trial.[15]

The Sixth Circuit, however, in *United States* v. *R. L. Polk & Co.*, 438 F. 2d 377, held that a jury trial was required when a fine of $35,000 was imposed in an antitrust criminal contempt case. It ruled that any offense for which a fine of more than $500 was imposed was "serious" rather than "petty", even though the actual impact of the fine might well depend on the fiscal worth of the entity fined. 18 U.S.C. 1(3). The court of appeals in the instant case acknowledged the conflict (Pet. App. xvi, n. 8), but relied on a more flexible standard for determining whether a particular fine imposed for criminal contempt made it a "serious" offense requiring a jury trial. In the circumstances of this case it found the offense not to be serious.

In view of the conflict over the propriety of impos-

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for criminal contempt could be imposed without a jury trial. See also *Baldwin* v. *New York*, 399 U.S. 66, 69 ("no offense can be deemed 'petty' for purposes of the right to trial by jury where imprisonment for more than six months is authorized"). And see *Codispoti* v. *Pennsylvania*, No. 73-5615, decided June 26, 1974, and *Taylor* v. *Hayes*, No. 73-473, decided June 26, 1974.

[15] See *In re Local 825, Operating Engineers*, 57 LRRM 2143 (C.A. 3), certiorari denied, 379 U.S. 934 (union fined $15,000 and its business manager $5,000); *In re Holland Furnace Co.*, 341 F. 2d 548 (C.A. 7), certiorari denied, 381 U.S. 924 (company of which Cheff was president fined $100,000); *In re Jersey City Education Ass'n*, 115 N.J. Super. 42, 278 A. 2d 206, 213-215, certiorari denied, 404 U.S. 948 (union fined $10,000); *In re Fair Lawn Education Ass'n*, 63 N.J. 112, 305 A. 2d 72, certiorari denied, 414 U.S. 855 (union with 347 members fined $17,350). See also *Rankin* v. *Shanker*, 23 N.Y. 2d 111, 242 N.E. 2d 802, 807-808, stay denied, 393 U.S. 930 (union subject to fine of $10,000 per day).

ing a fine of that amount for criminal contempt without a jury trial, we do not oppose review of this question.

6. The standard for assessing the validity of contempt fines is that enunciated in *United States* v. *United Mine Workers*, 330 U.S. 258, 303:

> In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge.[16]

The court of appeals correctly concluded that the fines imposed by the district court were proper. The punitive fines amounted to $10,000 against each union—the balance of $15,000 was suspended and subject to remission if there were no future violations. This amount was not beyond the unions' financial means.[17] Nor was it disproportionate to the seriousness of the contumacious conduct found.[18]

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[16] In *Mine Workers*, the Court sustained a fine of $700,000 against the union, to be increased to $3,500,000 unless it complied within five days, with the outstanding injunction. 330 U.S. at 304–305.

[17] Each union has annual gross receipts in excess of $700,000 (Pet. Exh. 121, Presentence Report and Recommendations; Tr. 2676–2677).

[18] The unions were found to have committed at least 26 violations of the outstanding injunction orders (R. 1254–1259).

CONCLUSION

The petition for a writ of certiorari in No. 73–1813 should be denied. The petition for a writ of certiorari in No. 73–1924 should be granted with respect to questions 3 and 4 in that petition.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
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JOHN S. IRVING,
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Deputy Associate General Counsel,

MARVIN ROTH,
Deputy Assistant General Counsel,
National Labor Relations Board.

OCTOBER 1974.

APPENDIX A

[Caption Omitted]

Civil No. C-70 895 WTS*

Order and Adjudication in Civil Contempt

December 24, 1970

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relation Board, herein called the Board, having duly petitioned this Court for an order adjudging San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), it Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10

(herein called Respondent Local 10), and its officers and agents, in civil contempt of this Court by reason of disobedience of and resistance to, and failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein in Civil No. C–70 306 LHB on February 13, 1970, and in Civil No. C–70 895 WTS on April 28, 1970; and this Court having, on October 19, 1970, ordered the said Respondents to appear before this Court and show cause why they should not be adjudged in civil contempt of this Court; and the matter having come on for hearing before the Court initially on October 23, 1970, and on various dates thereafter; and Respondents having appeared personally and by counsel, and having been afforded full opportunity to offer evidence and to argue on the law and the facts; and it having been determined that this Court shall make Findings of Fact and Conclusions of Law as set forth below and enter such order as warranted by the evidence before the Court; now, therefore, upon all the pleadings and proceedings heretofore had herein,

The Court finds that the allegations of the Petition filed herein on October 19, 1970, particularly the allegations of Paragraphs III and IV, all of which allegations are hereby incorporated by reference herein, have been proved by a preponderance of the evidence; and the facts of such allegations constitute the findings of fact in this case; and it is hereby,

ORDERED, ADJUDGED AND DECREED that Respondents Local 21, Local 70, Local 85, Local 10 and individual Respondents DeMartini, Abrams, Muniz, and Richardson are, and have been, and they hereby are adjudged to be, in civil contempt of this Court by reason of their disobedience of and resistance to, and their failure and refusal to comply with, the Temporary Injunction Orders of this Court

entered herein on February 13, 1970, and on April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that said Respondents Local 21, Local 70, Local 85, Local 10, DeMartini, Abrams, Muniz and Richardson, and each of them, shall purge themselves of their said civil contempt of this Court, by:

(a) Fully complying with all the provisions of this Court's orders of February 13, 1970, and April 28, 1970;

(b) Notifying Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores, Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc. (herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc. (herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and The Coca-Cola Bottling Co. (herein called Coca-Cola), that they are free to continue or resume advertising in or doing

business with the Journal without fear of economic or other consequences from Respondents, or any of them, and that Respondents will not, by picketing or in any other manner, or by any other means, induce or encourage any individual employed by any of such firms, or any of their suppliers, or of any carrier making deliveries to or pickups from them, or of any person doing business with them to engage in any work stoppage or refusal in the course of his employment to perform work, or in any like or similar manner, threaten, coerce or restrain them, or any of them, or any person doing business with them, in order to force or require any such person to cease placing advertisements in the Journal or to otherwise cease doing business with California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal).

(c) Posting Notices attached hereto as an appendix at all places where notices and communications to members of Respondents Local 21, Local 70, Local 85 and Local 10, are customarily posted, and maintaining said posted Notices for a period of at least sixty (60) consecutive days, said Notices stating that Respondents have been adjudged in civil contempt of this Court for their disobedience of, and resistance to, and their failure and refusal to comply with, the injunction orders entered by this Court on February 13 and April 28, 1970, and that Respondents will not repeat the conduct found to have violated the Court's orders, or further engage in, sanction, support, induce or encourage any acts or conduct in violation of said injunction orders; and by making available to Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Svenhard, Rawson, Armour and Coca-Cola signed copies of said Notices

for posting at their places of business if they so desire;

(d) As to paragraphs (b) and (c) above, Respondents shall have until January 21, 1971 to show cause why they should not comply with the said purgation provisions.

in Civil Contempt;

(e) Appearing in person before this Court on January 21, 1971, at four o'clock in the afternoon, Pacific Standard Time, and showing to this Court that Respondents have complied with paragraph (a) of this Order of Adjudication and Civil Contempt; and it is further

ORDERED, ADJUDGED AND DECREED that in the event of the failure or refusal of Respondents Local 21, Local 70, Local 85 or Local 10 to comply with the foregoing purgation provisions of this decree and to make the showing referred to in paragraph (e) above, attachment for civil contempt shall issue against such delinquent Respondent Local, and such delinquent Respondent Local shall pay to Petitioner a "compliance fine" of $7,500 a day for each day that such Respondent Local fails to comply with the purgation provisions of this decree and/or the Temporary Injunction Orders entered in this Court on February 13 and April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that in the event of the failure or refusal of Respondents DeMartini, Abrams, Muniz and/or Richardson to make the showing referred to in paragraph (e) above, attachment for civil contempt shall issue against such delinquent individual Respondent and that Respondent individual shall pay to Petitioner a "compliance fine" of $100 a day for each day that such Respondent individual fails to comply with the purgation pro-

visions of this decree and/or the Temporary Injunction Orders entered in this Court on February 13 and April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that this Court retains jurisdiction of this matter for purposes of determining and imposing a "compensatory fine" upon Respondents Local 21, Local 70, Local 85 and Local 10 to make reimbursement for costs and expenses, including reasonable counsel fees incurred in the investigation, preparation, presentation and final disposition of this proceeding for adjudication in civil contempt.

DATED AT San Francisco, California, this 24th day of December, 1970.

W. T. SWEIGERT,
United States District Judge.

APPENDIX B

[caption omitted]

Civil No. C-70 895 WTS

Findings of Fact and Conclusions of Law Re: Civil Contempt Proceedings

January 28, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business

Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10, (herein called Respondent Local 10), and its officers and agents; herein jointly and severely referred to as respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte,* criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970 requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be adjudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by counsel, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and during the course of these proceedings, petitioner having amended his petition to delete the name of Henry Montano as a respondent; and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court having fully considered all the testimony, evidence, exhibits, and arguments offered, and, on December 24, 1970, this Court having issued its Order and Adjudication in Criminal Contempt as to Respondent Local 21, Respondent Local 85, Respondent Local 70, Respondent Abrams, Respondent Richardson and Respondent Muniz, and having on the same date issued its Order and Adjudication in Civil Contempt as to all the respondents, and this

Court, on January 21, 1971, having made Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings supplimentary to and *in extenso* of the December 24, 1970 Order and Adjudication in Criminal Contempt, and this Court on January 22, 1971, having afforded all the respondents additional opportunity to offer evidence, testimony, exhibits, and argument on the civil contempt proceedings, and Respondent Local 10 having requested an opportunity to present additional evidence, and this Court having set aside the December 24, 1970 Order and Adjudication in Civil Contempt as to Respondent Local 10 for such purpose, and this Court having received and considered the additional evidence offered by Respondent Local 10 and upon consideration of such additional evidence and the entire record in this case, this Court hereby reaffirms its Order and Adjudication in Civil Contempt dated December 24, 1970 as to all the respondents and, supplementary to and *in extenso* of such order, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I. On February 13, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21 and Respondent Local 85, their officers, representatives, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them, or any of them, from:

(a) Continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco; or picketing cargo or shipments of newsprint or other supplies awaiting delivery to California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal), or picketing the piers or terminals where such cargo or shipments are located, or picketing the

carriers of such cargo or shipments; or signaling or appealing to truckdrivers or other employees not to pick up, handle or work on such cargo or shipments at such piers or terminals, or otherwise to refuse to perform services for their respective employers at such piers or terminals; or

(b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts of conduct, or by permitting any such to remain in existence or effect, or by employee discrimination, reprisals, disciplinary proceedings or threats thereof, INDUCING OR ENCOURAGING any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Lift Service, Inc. (herein called Star, Garden City and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce TO ENGAGE IN, a strike, slow down or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting, or promoting any such strike or refusal; or

In any such or similar manner or by any other means, including refusal to dispatch employees pursuant to contractual obligation or custom, THREATENING, COERCING OR RESTRAINING said employers, or any other person engaged in commerce or in an industry affecting commerce,

Where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person, to cease doing business with Powell, or to force or require Globe, or any other person, to cease doing busi-

ness with Garden City, in order to compell Powell to cease doing business with Journal.

II. On April 28, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21, its officers, representatives, agents, servants, employees, attorneys and all members, persons and labor organizations acting in concert or participation with it, from:

(a) Continuing or resuming its picketing of the following named employers at or in the vicinity of the stores listed below where an object of the picketing is to cause customers of these stores to cease buying products not advertised in The Independent Journal newspaper:

The Emporium
835 Market Street
San Francisco, California
The Emporium
1000 Northgate Fashion Mall
San Rafael, California
Mayfair Market
7th and H Streets
San Rafael, California
Lucky
720 Center Street
Fairfax, California
Big G Super
100 Harbor Drive
Sausalito, California
Big G Super
5651 Paradise Drive
Corte Madera, California
Longs Drugs
880 Sir Francis Drake Boulevard
San Anselmo, California
Longs Drugs
442 Las Gallinas Avenue
San Rafael, California

(b) Picketing at or in the vicinity of the premises of other firms which advertise in The Independent Journal newspaper where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that paper;

(c) Appealing to the public, consumers and customers by means of handbills, oral statements, or otherwise, in conjunction with picketing, not to patronize the stores described in subparagraph (a) above, or any store owned by the firms named therein, or any other store advertising in The Independent Journal newspaper; or

(d) Threatening, coercing, or restraining The Emporium-Capwell Corporation, Arden-Mayfair Incorporated, Lucky Stores, Inc., Big G Super Markets, Inc., Longs Drug Stores Incorporated or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent Journal newspaper or to cease doing business with California Newspapers, Inc., d/b/a The Independent Journal.

III. The aforesaid injunction orders have been in full force and effect since their entry and respondents, and each of them, at all times material herein, have had notice and knowledge of their terms.

IV. (a) At all times material herein, Respondents DeMartini and Abrams have been Vice President and Organizer, respectively, of Respondent Local 21, and its agents within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act).

(b) At all times material herein, Respondent Local 70 has been a labor organization within the meaning of the Act.

(c) At all times material herein, Respondent Muniz has been President of Respondent Local 70 and its agent within the meaning of the Act.

(d) At all times material herein, Respondent Richardson has been the Business Manager and Recording Secretary of Respondent Local 85 and its agent within the meaning of the Act.

V. On or about, or prior to, October 7, 1970, respondents embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms, advertising in the Journal or to firms doing business with the Journal. In furtherance and support of their aforesaid joint plan, program and campaign:

1. On or about October 8, 1970, Respondent Abrams met with a group of approximately 15 men outside the Painters Union Hall on Mission and Tamalpais Streets in the City of San Rafael, California (hereafter referred to as San Rafael) during which meeting bumper stickers stating "Scabs Must Go" were distributed to members of the group. Thereafter, these men were dispatched by respondents to various street corners in San Rafael, where they engaged in stopping trucks of various carriers delivering merchandise and commodities to food markets and other firms in San Rafael advertising in the Journal, and, by oral appeals, by picketing, by obstructing traffic, and by other means, induce and encourage individuals employed by various carriers and food markets to refuse to make deliveries to firms advertising in the Journal, including Mayfair Market (herein called Mayfair). Among the individuals engaging in some of the aforesaid conduct was Respondent Richardson.

2. Also on or about October 8, 1970, respondents, including Respondent Richardson, picketed the delivery

area of Safeway, Inc. (herein called Safeway), located at 700 B Street in San Rafael, and induced and encouraged a driver of Safeway not to make a delivery.

3. Also on or about October 8, 1970, respondents by their agents, including Respondent Richardson and Respondent Muniz, harassed the driver of a truck of Garden City Transportation Co. Ltd. (herein called Garden City) on its return trip to Garden City's premises after making delivery of newsprint to the Journal, and picketed the premises of Garden City and its truck with signs, the legend on some of which read: "Teamsters on Strike—Scabs Must Go." As a consequence of such picketing, drivers of Garden City engaged in work stoppages and refusals to perform services for their employer. In addition, respondents threatened Garden City with the shutdown of its operations on October 9, 1970.

4. Also on or about October 9, 1970, respondents, including Respondent Richardson, picketed a store of Lucky Stores, Inc. (herein called Lucky) at 400 Las Gallinas Avenue, San Rafael, as a consequence of which drivers employed by various carriers were prevented from making deliveries to the said store. By such conduct, and by other means, respondents induced, encouraged and appealed to drivers employed by carriers and suppliers not to make deliveries.

5. Also on or about October 9, 1970, respondents picketed a Lucky store at 720 Center Street, Fairfax, California, as a consequence of which drivers employed by various carriers and suppliers refused to make deliveries to such store. By such conduct, and by other means, respondents induced and encouraged drivers of various carriers and suppliers not to make deliveries to such store.

6. Also on or about October 9, 1970, respondents picketed the premises of Foremost Dairy Company (herein called Foremost) in San Rafael and a store of Mayfair at 340 Third Street, San Rafael, and induced and encouraged drivers not to make pickups or deliveries.

7. Also on or about October 9, 1970, respondents picketed the entrance to the Red Hill Shopping Center, Sir Francis Drake Boulevard, San Anselmo, California, with signs some of which read: "Teamsters Support Independent Journal" and "Teamsters on Strike." Respondents, by such picketing and by other means, caused trucks delivering goods to the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California, to turn away. Respondents also stopped trucks on Sir Francis Drake Boulevard, and induced and encouraged delivery drivers not to make deliveries to various Marin County retail stores.

8. On or about October 12, 1970, respondents, by their pickets and agents, by picketing and by other means, induced and encouraged drivers of Lucky not to perform services at the Lucky store located at 720 Center Street, Fairfax, California, and as a consequence prevented regular drivers from performing their duties for Lucky.

9. On or about October 12, 1970, respondents, by their agents, induced and encouraged delivery drivers not to perform services at a Lucky store located at 400 Las Gallinas Avenue, San Rafael, California.

10. On or about October 12, 1970, respondents, by their agents and pickets, by picketing and by other means, induced and encouraged delivery drivers employed by Safeway not to perform services at the Safeway store located at 700 B Street, San Rafael, California.

11. Also on or about October 12, 1970, and continuing through October 16, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged Safeway drivers not to perform services at its 700 B Street, San Rafael store. As a result, deliveries were not made.

12. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and by other means, induced and encouraged drivers not to make deliveries at United Market located at 515 Third Street, San Rafael, California. As a result, deliveries to that store were not made.

13. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Mayfair not to perform services for their employer.

14. On or about October 13, 1970, respondents picketed three corners of the Highway 101 off-ramp to San Rafael, California, at Mission and Heatherton Streets, carrying signs the legend on some of which read: "Unfair to Teamsters—Scabs Must Go." By such picketing, and other conduct, respondents obstructed traffic entering San Rafael while inducing and encouraging truck drivers not to perform services for, make deliveries to, or pickups from retail stores located in San Rafael.

15. Also on or about October 13, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Safeway not to perform services at Safeway's 900 Sir Francis Drake Boulevard, San Anselmo, California store. As a result of such activities, deliveries were not made.

16. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Highway 101 off-ramp at Second and Irwin Streets, San Rafael,

California. That same day respondents, by their agents and pickets, picketed two corners of the Highway 101 off-ramp to San Rafael at Mission and Heatherton Streets.

17. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Safeway store located at 700 B Street, San Rafael, California.

18. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the delivery areas to the United Super Market located at 100 Red Hill Avenue, San Anselmo, California, and such pickets and agents induced and encouraged drivers not to make deliveries at that store. As a result of respondents' activities, deliveries were not made.

19. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the street corners adjacent to and the delivery area of the United Market located at 515 Third Street, San Rafael, California. Respondents' said agents and pickets, by threats and picketing, induced and encouraged drivers not to make deliveries to that store. As a result of such activities, deliveries were not made.

20. Also on or about October 14, 1970, respondents, by their agents, induced and encouraged an employee of Ritz Foods not to perform services for his employer in San Rafael, San Anselmo and Fairfax, California.

21. Also on or about October 14, 1970, respondents, by their agents and pickets, by threats and picketing, induced and encouraged drivers of various employers engaged in commerce or in industries affecting commerce not to handle goods destined for Petrini's Meat, Inc. As a result of such activities, deliveries from various employers were not made. As a further consequence of such activities, Petrini's store received no deliveries of any kind after respondents' picketing began there on October 14, 1970.

22. On or about October 15, 1970, respondents, by their agents and pickets, picketed a Safeway truck near or adjacent to the Safeway store at 700 B Street, San Rafael, California. As a consequence of such picketing and other conduct, the Safeway driver refused to perform services for Safeway.

23. On or about October 16, 1970, respondents, by their pickets and agents, picketed the driveway and loading dock entrances to the Lucky store at 720 Center Street, Fairfax, California. The pickets carried signs some of which read: "This Seafarer Supports I. J. Strikers" and "Seamons Support I. J. Strikers."

24. Also on or about October 16, 1970, respondents, by their agents and pickets, picketed the customer entrances, delivery entrance and parking lot of the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California. Some of the pickets carried signs with legends stating "Seamans Support I. J. Strike." Others carried signs stating "This Longshoreman Supports I. J. Strike."

25. Also on or about October 16, 1970, respondents, by their pickets and agents, picketed with from 12 to 15 pickets in the area of the Red Hill Shopping Center in San Anselmo, California, in the vicinity of a store of Safeway, of Longs Drugs (herein called Longs), and Sears, Roebuck & Co. (herein called Sears). Such picketing was engaged in with signs which identified the pickets as "Longshoremen" and "Seaman." Among such pickets was a person wearing a button identifying him as a steward for Respondent Local 10.

26. On various occasions since about October 8, 1970, respondents, and each of them, acting jointly and in concert and participation with each other, and in furtherance and support of Respondent Local 21's dispute with the Journal, have, by picketing, oral ap-

peals, instructions, directions and orders, and by other means, induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in work stoppages and refusals to perform services for their employers and have threatened, coerced and restrained such persons.

VI. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above have been engaged in by respondents acting as joint venturers and in concert and participation with each other.

VII. The acts ad conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, and in paragraph VI above, have been engaged in by respondent labor organizations and the individual respondents named herein acting as joint venturers and in concert and participation with each other.

VIII. By the acts and conduct described in paragraph V and its subparagraphs 1 through 26 above, and by other means, respondents have engaged in, and have induced and encouraged individuals employed by Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc. (herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc.

(herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and The Coca-Cola Bottling Co. (herein called Coca-Cola), by their suppliers, by carriers making deliveries to or pickups from such persons, and by other persons engaged in commerce or in an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and have threatened, coerced or restrained such persons with an object or objects of:

(1) Forcing or requiring Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Svenhard, Rawson, Armour, Coca-Cola, and other persons to cease placing advertisements in or to otherwise cease doing business with each other or with The Journal.

(2) Forcing or requiring the customers and suppliers of such persons to cease doing business with such persons in order to compel such persons to cease placing advertisements in or otherwise cease doing business with The Journal.

IX. By their acts and conduct hereinabove set forth, respondents, and each of them, have failed and refused to comply with, and have violated and disobeyed,

the injunction Orders of this Court entered herein on February 13 and April 28, 1970.

CONCLUSIONS OF LAW

1. Respondents John DeMartini, Vice President, and Don Abrams, Organizer, were, and at all times material herein have been, representatives and agents of Respondent Local 21 within the meaning of the National Labor Relations Act, as amended (herein called the Act) and the Orders of this Court entered herein on February 13 and April 28, 1970.

2. Respondent Timothy J. Richardson, Business Manager and Recording Secretary, was, and at all times material herein has been, a representative and agent of Respondent Local 85 within the meaning of the Act, and the Orders of this Court entered herein on February 13 and April 28, 1970.

3. Respondent Local 70 is, and at all times material herein has been, a labor organization within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

4. Respondent James R. Muniz, President of Respondent Local 70, is, and at all times material herein has been, a representative and agent of Respondent Local 70 within the meaning of the Act.

5. Respondents have engaged in acts and conduct as set forth in the above Findings of Fact which affect the operations of Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's Lincoln, Tuttle, Svenhard, Rawson, Armour, Coca-Cola and other persons engaged in commerce within the meaning of Section 2, subsection (6) and (7) of the Act.

6. By their acts and conduct set forth in the above Findings of Fact, respondents, and each of them, have violated and disobeyed the Orders of this Court entered on February 13 and April 28, 1970, which acts and conduct constitute civil contempt of said Orders and of this Court.

DATED AT San Francisco, California, this 28th day of January, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX C

[caption omitted]

Civil No. C-70 895 WTS

Order and Adjudication in Criminal Contempt

December 24, 1970

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an order adjudging San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Repsondent Local 70), its officers and agents, and James R. Muinz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary, and International Longshoremen's and Warehousemen's Union Local No. 10, (herein called

Respondent Local 10), and its officers, and agents, in criminal contempt of this Court by reason of disobedience of and resistance to, and failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein in Civil No. C-70 306 LHB on February 13, 1970, and in Civil No. C-70 895 WTS on April 28, 1970; and this Court having, on October 19, 1970, ordered the said Respondents to appear before this Court and show cause why they should not be adjudged in criminal contempt of this Court; and the matter having come on for hearing before the Court initially on October 23, 1970, and on various dates thereafter; and Respondents having appeared personally and by counsel, and having been afforded full opportunity to offer evidence and to argue on the law and the facts; and it having been determined that this Court shall make Findings of Fact and Conclusions of Law as set forth below and enter such order as warranted by the evidence before the Court; now, therefore, upon all the pleadings and proceedings heretofore had herein, it is hereby found, concluded and adjudged as follows:

The Court finds that the allegations of the Petition filed herein on October 19, 1970, particularly the allegations of Paragraphs III and IV, all of which allegations are hereby incorporated by reference herein, have been proved beyond a reasonable doubt as to the respondents named below; and the facts of such allegations constitute the findings of fact in this case as to the respondents named below; and it is hereby,

ORDERED, ADJUDGED AND DECREED that Respondents Local 21, Local 70, Local 85, and individual Respondents Abrams, Muniz and Richardson are, and have been, and they hereby are adjudged to be, in criminal contempt of this Court by reason of

their wilful disobedience of and resistance to, and their wilful failure and refusal to comply with, the Temporary Injunction Orders of this Court entered herein on February 13, 1970, and on April 28, 1970; and it is further

ORDERED, ADJUDGED AND DECREED that said Respondents Local 21, Local 70, Local 85, Abrams, Muniz and Richardson, and each of them, shall appear in person before this Court on January 21, 1971, at four o'clock in the afternoon, Pacific Standard Time, at which time this Court shall render such judgment and impose such penalties as it deems just, proper and appropriate in the premises.

DATED AT San Francisco, California, this 24th day of December, 1970.

W. T. SWEIGERT,
United States District Judge.

APPENDIX D

[caption omitted]

Civil No. C-70 895 WTS

Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings

January 21, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having duly petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL-CIO, (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and

International Longshoremen's and Warehousemen's Union, Local No. 10 (herein called Respondent Local 10), and its officers and agents; herein jointly and severally referred to as respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte*, criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970, requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be ajudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by counsel, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court having fully considered all the testimony, evidence, exhibits, and arguments offered, hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On February 13, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21 and Respondent Local 85, their officers, agents, servants, employees, attorneys, and all members, persons and other labor organizations acting in concert or participation with them, or any of them, from:

(a) Continuing to picket at or in the vicinity of Pier 46A at the Port of San Francisco; or picketing cargo or shipments of newsprint or other supplies awaiting delivery to California Newspapers, Inc., d/b/a San Rafael Independent Journal (herein called Journal), or picketing the piers or terminals where such cargo or shipments are located, or picketing the carriers of such cargo or shipments; or signaling or appealing to truckdrivers or other employees not to pick up, handle or work on such cargo or shipments at such piers or terminals, or otherwise to refuse to perform services for their respective employers at such piers or terminals; or

(b) ENGAGING IN, or by picketing, orders, directions, solicitation, requests or appeals, howsoever given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, or by employee discrimination, reprisals, disciplinary proceedings or threats thereof, INDUCING OR ENCOURAGING any individual employed by Star Terminal Co., Inc., Garden City Transportation Co., Ltd., Globe-Wally's Fork Lift Service, Inc. (herein called Star, Garden City and Globe), or by any motor carrier, lift truck service company or other person engaged in commerce or in an industry affecting commerce TO ENGAGE IN, a strike, slow-down or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service; or sanctioning, supporting or promoting any such strike or refusal; or

In any such or similar manner or by any other means, including refusal to dispatch employees pursuant to contractual obligation or custom, THREATENING, COERCING OR RESTRAINING said em-

ployers, or any other person engaged in commerce or in an industry affecting commerce,

Where in either case AN OBJECT THEREOF is: (1) to force or require Powell River-Alberni Sales Limited (herein called Powell), or any other person, to cease doing business with Journal; or (2) to force or require Star, Garden City, or any other person, to cease doing business with Powell, or to force or require Globe, or any other person, to cease doing business with Garden City, in order to compel Powell to cease doing business with Journal.

II. On April 28, 1970, this Court made and entered an order enjoining and restraining Respondent Local 21, its officers, representatives, agents, servants, employees, attorneys, and all members, persons and labor organizations acting in concert and participation with it, from:

(a) Continuing or resuming its picketing of the following named employers at or in the vicinity of the stores listed below where an object of the picketing is to cause customers of these stores to cease buying products not advertised in The Independent Journal newspaper:

The Emporium
835 Market Street
San Francisco, California
The Emporium
1000 Northgate Fashion Mall
San Rafael, California
Mayfair Market
7th and H Streets
San Rafael, California
Lucky
720 Center Street
Fairfax, California
Big G Super
100 Harbor Drive
Sausalito, California

Big G Super
5651 Paradise Drive
Corte Madera, California
Longs Drugs
880 Sir Francis Drake Boulevard
San Anselmo, California
Longs Drugs
442 Las Callinas Avenue
San Rafael, California

(b) Picketing at or in the vicinity of the premises of other firms which advertise in The Independent Journal newspaper where an object of the picketing is to cause customers of such firms to cease buying products not advertised in that paper;

(c) Appealing to the public, consumers and customers by means of handbills, oral statements, or otherwise, in conjunction with picketing, not to patronize the stores described in subparagraph (a) above, or any store owned by the firms named therein, or any other store advertising in The Independent Journal newspaper; or

(d) Threatening, coercing, or restraining The Emporium-Capwell Corporation, Arden-Mayfair Incorporated, Lucky Stores, Inc., Big G Super Markets, Inc., Longs Drug Stores Incorporated or any other firm advertising in The Independent Journal newspaper, by consumer picketing or by any like or related acts or conduct, where an object thereof is to force or require the said advertisers to cease advertising in The Independent Journal newspaper or to cease doing business with California Newspapers, Inc., d/b/a The Independent Journal.

III. The aforesaid injunction orders have been in full force and effect since their entry and respondents, and each of them, at all times material herein have had notice and knowledge of their terms.

IV. (a) At all times material herein, Respondent DeMartini and Abrams have been Vice President and Organizer, respectively, of Respondent Local 21, and its agents within the meaning of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act).

(b) At all times material herein, Respondent Local 70 has been a labor organization within the meaning of the Act.

(c) At all times material herein, Respondent Muniz has been President of Respondent Local 70 and its agent within the meaning of the Act.

(d) At all times material herein, Respondent Richardson has been the Business Manager and Recording Secretary of Respondent Local 85 and its agent within the meaning of the Act.

V. On or about, or prior to, October 7, 1970, respondents embarked upon a joint plan, program and campaign to create a boycott of goods, materials, commodities and services destined to, consigned to, or utilized by firms advertising in the Journal or to firms doing business with the Journal. In furtherance and support of their aforesaid joint plan, program and campaign:

1. On or about October 8, 1970, Respondent Abrams met with a group of approximately 15 men outside the Painters Union Hall on Mission and Tamalpais Streets in the City of San Rafael, California (hereafter referred to as San Rafael), during which meeting bumper stickers stating "Scabs Must Go" were distributed to members of the group. Thereafter, these men were dispatched by respondents to various street corners in San Rafael, where they engaged in stopping trucks of various carriers delivering merchandise and commodities to food markets and other firms in San Rafael advertising in the Journal, and, by oral

appeals, by picketing, by obstructing traffic, and by other means, induced and encouraged individuals employed by various carriers and food markets to refuse to make deliveries to firms advertising in the Journal, including Mayfair Market (herein called Mayfair). Among the individuals engaging in some of the aforesaid conduct was Respondent Richardson.

2. Also on or about October 8, 1970, respondents, including Respondent Richardson, picketed the delivery area of Safeway, Inc. (herein called Safeway), located at 700 B Street in San Rafael, and induced and encouraged a driver of Safeway not to make a delivery.

3. Also on or about October 8, 1970, respondents, by their agents, including Respondent Richardson and Respondent Muniz, harassed the driver of a truck of Garden City Transportation Co. Ltd. (herein called Garden City) on its return trip to Garden City's premises after making delivery of newsprint to the Journal, and picketed the premises of Garden City and its truck with signs, the legend on some of which read: "Teamsters on Strike—Scabs Must Go." As a consequence of such picketing, drivers of Garden City engaged in work stoppages and refusals to perform services for their employer. In addition, respondents threatened Garden City with the shutdown of its operations on October 9, 1970.

4. Also on or about October 9, 1970, respondents, including Respondent Richardson, picketed a store of Lucky Stores, Inc. (herein called Lucky) at 400 Las Gallinas Avenue, San Rafael, as a consequence of which drivers employed by various carriers were prevented from making deliveries to the said store. By such conduct, and by other means, respondents induced, encouraged and appealed to drivers employed by carriers and suppliers not to make deliveries.

5. Also on or about October 9, 1970, respondents picketed a Lucky store at 720 Center Street, Fairfax, California, as a consequence of which drivers employed by various carriers and suppliers refused to make deliveries to such store. By such conduct, and by other means, respondents induced and encouraged drivers of various carriers and suppliers not to make deliveries to such store.

6. Also on or about October 9, 1970, respondents picketed the premises of Foremost Dairy Company (herein called Foremost) in San Rafael and a store of Mayfair at 340 Third Street, San Rafael, and induced and encouraged drivers not to make pickups or deliveries.

7. Also on or about October 9, 1970, respondents picketed the entrance to the Red Hill Shopping Center, Sir Francis Drake Boulevard, San Anselmo, California, with signs some of which read: "Teamsters Support Independent Journal" and "Teamsters On Strike." Respondents, by such picketing and by other means, caused trucks delivering goods to the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California, to turn away. Respondents also stopped trucks on Sir Francis Drake Boulevard, and induced and encouraged delivery drivers not to make deliveries to various Marin County retail stores.

8. On or about October 12, 1970, respondents, by their pickets and agents, by picketing and by other means, induced and encouraged drivers of Lucky not to perform services at the Lucky store located at 720 Center Street, Fairfax, California, and as a consequence prevented regular drivers from performing their duties for Lucky.

9. On or about October 12, 1970, respondents, by their agents, induced and encouraged delivery drivers not to perform services at a Lucky store located at 400 Las Gallinas Avenue, San Rafael, California.

10. On or about October 12, 1970, respondents, by their agents and pickets, by picketing and by other means, induced and encouraged delivery drivers employed by Safeway not to perform services at the Safeway store located at 700 B Street, San Rafael, California.

11. Also on or about October 12, 1970, and continuing through October 16, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged Safeway drivers not to perform services at its 700 B Street, San Rafael store. As a result, deliveries were not made.

12. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and by other means, induced and encouraged drivers not to make deliveries at United Market located at 515 Third Street, San Rafael, California. As a result, deliveries to that store were not made.

13. Also on or about October 12, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Mayfair not to perform services for their employer.

14. On or about October 13, 1970, respondents picketed three corners of the Highway 101 off-ramp to San Rafael, California, at Mission and Heatherton Streets, carrying signs the legend on some of which read: "Unfair To Teamsters—Scabs Must Go." By such picketing, and other conduct, respondents obstructed traffic entering San Rafael while inducing and encouraging truck drivers not to perform services for, make deliveries to, or pickups from retail stores located in San Rafael.

15. Also on or about October 13, 1970, respondents, by their agents and pickets, by means of picketing and other activities, induced and encouraged drivers of Safeway not to perform services at Safeway's

900 Sir Francis Drake Boulevard, San Anselmo, California store. As a result of such activities, deliveries were not made.

16. On or about October 14 1970, respondents, by their agents and pickets, picketed the Highway 101 off-ramp at Second and Irwin Streets, San Rafael, California. That same day Respondents, by their agents and pickets, picketed two corners of the Highway 101 off-ramp to San Rafael at Mission and Heatherton Streets.

17. On or about October 14, 1970, respondents, by their agents and pickets, picketed the Safeway store located at 700 B Street, San Rafael, California.

18. Also on or about October 14, 1970, respondents, by their agents and pickets, picketed the delivery areas to the United Super Market located at 100 Red Hill Avenue, San Anselmo, California, and such pickets and agents induced and encouraged drivers not to make deliveries at that store. As a result of respondents' activities, deliveries were not made.

19. Also on or about October 14, 1970, Respondents, by their agents and pickets, picketed the street corners adjacent to and the delivery area of the United Market located at 515 Third Street, San Rafael, California. Respondents' said agents and pickets, by threats and picketing, induced and encouraged drivers not to make deliveries to that store. As a result of such activities, deliveries were not made.

20. Also on or about October 14, 1970, respondents, by their agents, induced and encouraged an employee of Ritz Foods not to perform services for his employer in San Rafael, San Anselmo and Fairfax, California.

21. Also on or about October 14, 1970, respondents, by their agents and pickets, by threats and picketing, induced and encouraged drivers of various employers

engaged in commerce or in industries affecting commerce not to handle goods destined for Petrini's Meat, Inc. As a result of such activities, deliveries from various employers were not made. As a further consequence of such activities, Petrini's store received no deliveries of any kind after respondents' picketing began there on October 14, 1970.

22. On or about October 15, 1970, respondents, by their agents and pickets, picketed a Safeway truck near or adjacent to the Safeway store at 700 B Street, San Rafael, California. As a consequence of such picketing and other conduct, the Safeway driver refused to perform services for Safeway.

23. On or about October 16, 1970, respondents, by their pickets and agents, picketed the driveway and loading dock entrances to the Lucky store at 720 Center Street, Fairfax, California. The pickets carried signs some of which read: "This Seafarer Supports I. J. Strikers" and "Seamans Support I. J. Strikers."

24. Also on or about October 16, 1970, respondents, by their agents and pickets, picketed the customer entrances, delivery entrance and parking lot of the Safeway store located at 900 Sir Francis Drake Boulevard, San Anselmo, California. Some of the pickets carried signs with legends stating "Seamans Support I. J. Strike." Others carried signs stating "This Longshoreman Supports I. J. Strike."

25. Also on or about October 16, 1970, respondents, by their pickets and agents, picketed with from 12 to 15 pickets in the area of the Red Hill Shopping Center in San Anselmo, California, in the vicinity of a store of Safeway, of Longs Drugs (herein called Longs), and Sears Roebuck & Co. (herein called Sears). Such picketing was engaged in with signs which identified the pickets as "Longshoremen" and "Seamen." Among

such pickets was a person wearing a button identifying him as a steward for Respondent Local 10.

26. On various occasions since about October 8, 1970, respondents, and each of them, acting jointly and in concert and participation with each other, and in furtherance and support of Respondent Local 21's dispute with the Journal, have, by picketing, oral appeals, instructions, directions and orders, and by other means, induced or encouraged individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in work stoppages and refusals to perform services for their employers and have threatened, coerced and restrained such persons.

VI. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, have been engaged in by respondents acting as joint venturers and in concert and participation with each other.

VII. The acts and conduct of respondents set forth in paragraph V and its subparagraphs 1 through 26 above, and in paragraph VI above, have been engaged in by respondent labor organizations and the individual respondents named herein acting as joint venturers and in concert and participation with each other.

VIII. By the acts and conduct described in paragraph V and its subparagraphs 1 through 26 above, and by other means, respondents have engaged in, and have induced or encouraged individuals employed by Arden-Mayfair, Incorporated (herein called Mayfair), Garden City Transportation Co., Ltd. (herein called Garden City), Lucky Stores, Inc. (herein called Lucky), Long's Drug Stores Incorporated (herein called Long's), Safeway Stores, Incorporated (herein called Safeway), Foremost Dairy Company (herein called Foremost), United Markets, Inc.

(herein called United), Ritz Foods (herein called Ritz), Petrini's Meat, Inc. (herein called Petrini's), Olson Brothers, Incorporated (herein called Olson), Sears, Roebuck & Co. (herein called Sears), Greyhound Bus Lines (herein called Greyhound), Parisian Bakeries, Inc. (herein called Parisian), American Bakeries Co. (herein called American), Nielsen Freight Lines, Inc. (herein called Nielsen), Rath Packing Company (herein called Rath), Kockos Brothers (herein called Kockos), Cala Foods, Inc. (herein called Cala), Baroni French Baking Co. (herein called Baroni), Kilpatrick's Bakeries, Inc. (herein called Kilpatrick's), Lincoln's Market (herein called Lincoln), Tuttle Cheese Co. (herein called Tuttle), Svenhard Bakeries (herein called Svenhard), Rawson Company (herein called Rawson), Armour and Company (herein called Armour), and the Coca-Cola Bottling Co. (herein called Coca-Cola), by their suppliers, by carriers making deliveries to or pickups from such persons, and by other persons engaged in commerce or in an industry affecting commerce, to engage in strikes or refusals in the course of their employment to use, manufacture, process, transport or otherwise handle or work on goods, articles, materials or commodities, or to perform services, and have threatened, coerced or restrained such persons with an object or objects of:

(1) forcing or requiring Mayfair, Garden City, Lucky, Long's, Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's Lincoln, Tuttle, Svenhard, Rawson, Armour, Coco-Cola, and other persons to cease placing advertisements in or to otherwise cease doing business with each other or with the Journal.

(2) forcing or requiring the customers and suppliers of such persons to cease doing business with such persons in order to compel such persons to cease placing advertisements in or otherwise cease doing business with the Journal.

IX. (Deleted.)

X. By their acts and conduct hereinabove set forth, Respondent Local 21, Respondent Local 70, Respondent Local 85, Respondent Abrams, Respondent Muniz and Respondent Richardson, and each of them, have knowingly and wilfully, and with intent to defy, disobeyed and violated the Orders of this Court entered herein on February 13 and April 28, 1970.

CONCLUSIONS OF LAW

1. Respondents John DeMartini, Vice President, and Don Abrams, Organizer, were, and at all times material herein have been, representatives and agents of Respondent Local 21 within the meaning of the National Labor Relations Act, as amended (herein called the Act) and the Orders of this Court entered herein on February 13 and April 28, 1970.

2. Respondent Timothy J. Richardson, Business Manager and Recording Secretary, was, and at all times material herein has been, a representative and agent of Respondent Local 85 within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

3. Respondent Local 70 is, and at all times material herein has been, a labor organization within the meaning of the Act and the Orders of this Court entered herein on February 13 and April 28, 1970.

4. Respondent James R. Muniz, President of Respondent Local 70, is, and at all times material herein has been, a representative and agent of Respondent Local 70 within the meaning of the Act.

5. Respondents have engaged in acts and conduct as set forth in the above Findings of Fact which affect the operations of Mayfair, Garden City, Lucky, Long's Safeway, Foremost, United, Ritz, Petrini's, Olson, Sears, Greyhound, Parisian, American, Nielsen, Rath, Kockos, Cala, Baroni, Kilpatrick's, Lincoln, Tuttle, Sevenhard, Rawson, Armour, Coca-Cola, and other persons engaged in commerce within the meaning of Section 2, subsections (6) and (7) of the Act.

6. (Deleted.)

7. By their acts and conduct set forth in the above Findings of Fact, Respondent Local 21, Respondent Local 70, Respondent Local 85, Respondent Abrams, Respondent Muniz, and Respondent Richardson, and each of them, have knowingly and wilfully, and with intent to defy, disobeyed, violated, resisted and disregarded the Orders of this Court entered on February 13 and April 28, 1970, which acts and conduct constitute criminal contempt of said Orders and of this Court.

DATED AT San Francisco, California, this 21st day of January, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX E

Judgment Imposing Fines and Penalties in Re: Criminal Contempt

* * * * *

[2727] The COURT: Anything further from anyone that would like to be heard?

All right, I think, then at this time, the Court will proceed to judgment.

Have I got the prior order?

I might say in this matter, before pronouncing judgment, that I agree and I think all counsel should agree that the issue here is not the strike of Typographical Union No. 21 against the Independent-Journal. No question has been raised here about the legality of that strike or the right of the union involved or any other unions that wish to support it to picket in support of that strike. The issue presented to this Court was something entirely different. It was an issue as to whether on not these three unions, Typographical Union 21, Teamsters Union No. 85 and Teamsters Union No. 70 had, in concert or otherwise, turned what was a perfectly legitimate strike against the Independent-Journal into an attempt to expand it into a secondary strike involving virtually all of Marin County insofar as the deliveries by neutral trucks to neutral stores, retail outlets was concerned. There was some evidence in the record of violence, not great, but there—was evidence in the record of [2728] threats of violence by people connected with those unions, not only against what we might call laymen, but even against their own truck men from other labor unions.

And I am perfectly satisfied that this activity continued for somewhere within a month, so far as the evidence shows in this case, and I am also quite satisfied that all of these unions had notice and knowledge of the two court orders in question; Typographical Union 21 and Typographical Union 85, by direct service, which is not substantially in dispute, and Teamsters Local No. 70, not by direct service of notice, but otherwise by circumstantial evidence, in this case which leads the Court to believe that it would be ridiculous to hold that Mr. Muniz, who was president of Local 70 and over there on the ground taking an active part in it in connection with people from the other labor unions, didn't know about this order affecting one of his kindred teamster unions, so there is no doubt at all in the Court's mind about the violation of the Court order and about the fact that it was a violation that was made with knowledge.

On the other hand, I recognize that perhaps there were some provocations involved here, the long duration and stubborn resistance of the employer to the strike at Local 21 and also there was some, perhaps over-zealous reaction here by members, some members of these unions.

However, the unions that have been found guilty, all [2729] had people of—in their high echelons over there on the ground; Mr. Muniz for Local 70, Mr. Richardson for, I think it was—that's 85; isn't it? And the other gentleman for—for Local 21. I am trying to remember his name. Oh, yes. Mr. Abrams, and other people connected with these unions were on the ground and their activities were not limited to furthering the normal legitimate strike activities of Local 21 against the employer, Independent-Journal. Rather, their activities, according to the evidence, is clearly connected with an attempt to spread this iso-

lated strike into an expanded strike throughout the county, an attempt which, in its effects, reached somewhat serious proportion.

I said before, I am satisfied, from the evidence, that there was knowledge of the Court's order and it is essential to the system under which we live, system of law and order, mitigated by considerations of justice that Court's orders must be obeyed. They may be wrong, but until they are set aside or until they are appealed from, or otherwise stayed, they must be obeyed. And this is particularly true in the case of corporations.

Now, a union is, in one sense, a corporation. It is not a business corporation such as sometimes appears before this Court and is subject to fine, but it is, nevertheless, a so-called non-profit corporation and it is recognized for many purposes as a legal personality and these, the unions, [2730] by reason of this recordation, assume certain responsibilities for compliance with the law. I do not want to overpaint what happened in this incident, nor do I wish to underestimate it. I, therefore, after very serious and careful consideration to the evidence in this case, and to the presentations that have been made here to the Court at this hearing, insofar as the criminal contempt of this Court is concerned, that as to Typographical Union No. 21, there should be a fine of $25,000 with the following qualification, however. That as to $10,000 of that fine, there will be a stay of execution for 15 days. As to the balance of $15,000, there will be a suspension of payment for a payment of one year and with the following conditions, that if the Court is satisfied at the end of the period of one year that Typographical Union No. 21 has not directly or indirectly violated again the orders of this Court in this respect, that the balance of that fine will be remitted.

Also, it is understood that this period of one year is subject to either shortening or extension and the Court observes the power of the Court to, and the Court reserves power to do so.

As to Typographical—as to Teamsters Union No. 21, the——

Mr. BEESON: Excuse me, Your Honor.

The COURT: As to Teamsters Union Local 85, the [2731] Court is of the view that that union also should be fined the sum of $25,000 with a similar understanding. Namely, that $10,000 thereof will be stayed until, as to payment, for 15 days, and as to the balance of $15,000, there will be a suspension of payment of that balance for a period of one year with the understanding that if the Court is satisfied at the end of one year there has been no further violation of its orders in question, that that balance will be remitted. The Court also reserving power to either shorten that period of one year or to extend it.

As to Teamsters Union Local 70, the Court is also of the view that that union should be fined the sum of $25,000 with a similar understanding that $10,000 thereof be stayed for a period of 15 days and that the balance of $15,000 shall be suspended for a period of one year with the understanding that if Local 70, by the finding of the Court subsequently has not violated this, these orders of Court, that that balance will be remitted as to that union.

The Court similarly reserving the power to either extend or to shorten that.

A formal order will be prepared reflecting these views, and indicating that what the Court says about future violations of the order means that these unions will not directly or indirectly, either alone or in conjunction with others, further violate the terms of the injunctions in [2732] question.

So far as the unions are concerned, and so—I believe that that, that this, these fines and this penalty will be not too heavy nor too light. In view of the nature of the situation that we face to vindicate the principle that unions just as well as other corporations, all of these corporations, assuming responsibility to the public and having unique powers and influence, themselves, must obey the orders of the Court.

We will now proceed to the individual defendants. I would like to have Mr. Muniz, Mr. Richardson and Mr. Abrams step forward.

This is Mr. Richardson?

Mr. RICHARDSON: Yes.

The COURT: This is Mr. Muniz?

Mr. ABRAMS: Abrams.

The COURT: This is Mr. Muniz?

As to the three defendants, the Court has found each of you guilty of violation of the orders of the Court and human mind is frail and I may be wrong, but that's my finding from the evidence in this case, and I believe that with respect to the individuals, there is no need for this Court to vindicate its integrity here by fining these individuals. This is an institution matter. I am not going to fine these individuals and furthermore, I don't think that the situation [2733] here calls for any drastic action with respect to these individuals who, as I say, are instrumentalities in the movement, in the institution of design here. I, therefore, am going to suspend imposition of penalty in this case so far as these three men are concerned; two of them being president of their union and one of them being secretary.

Mr. BEESON: Your Honor, Mr. Abrams is an organizer.

The COURT: Mr. Abrams being an organizer. I beg your pardon.

Mr. Muniz being——

Mr. MUNIZ: President.

The COURT: Mr. Richardson being the——

Mr. RICHARDSON: Recording secretary.

The COURT: I am going to suspend any penalty with respect to these individuals and place them on probation for one year subject to the Court's right to shorten or to extend that period with the understanding, however, that if—that the condition of probation is that these men do nothing to further any additional violations of the order in question, of the purported orders in question, with the understanding that if they break what is, I believe, a very fair condition of their probation, that they subject themselves to the power of this Court to impose a sentence of imprisonment of up to, but not exceeding, six months. And I believe that unless these gentlemen, as individuals, have anything to say [2734] to me, that that's the way the matter will stand.

I think, however, it's been made clear that any statements that you three gentlemen would like to offer have already been made by your counsel.

Do you understand that, Mr. Richardson?

Mr. RICHARDSON: Yes, sir.

The COURT: And you, Mr. Abrams?

Mr. ABRAMS: Yes, Your Honor.

The COURT: And you, Mr. Muniz?

Mr. MUNIZ: Yes, Your Honor.

The COURT: All right, thank you very much, gentlemen.

Mr. POOLE: Your Honor, may I be heard at this moment?

The COURT: Yes.

Mr. POOLE: Your Honor is mindful of the position expressed by counsel and the authorities presented earlier in this hearing concerning the power of the

Court to impose certain sentences in the light of decisions of the United States Supreme Court in cases ranging from United States versus Barnett——

The COURT: What is the point of your remarks?

Mr. POOLE: The point of my remarks, Your Honor, is I ask Your Honor to reconsider the fine which Your Honor has now imposed upon the two unions, Locals 85 and 21 because those fines exceed the allowable pecuniary fine set forth in Title 18 of the United States Code, Section 1, relating to [2735] petty offense. I made these—this position clear to Your Honor during the proceedings.

The COURT: I have considered that and I have made my interpretation and I—it's no need to reconsider what I have already considered. The fines that I have levied will stand. You have your remedy by appeal.

Mr. POOLE: I understand.

The COURT: I may well be wrong.

Mr. POOLE: Well, I know Your Honor doesn't desire argument. I don't intend to. I think the record should show, Your Honor—let me just make this brief statement for the record that in view of the Court's denial of the jury trial requested on behalf of Locals 85 and 21, it is our position, and we therefore move the Court to remit so much of the sentence that exceeds that entitled petty offense, based upon the authority of the Supreme Court decisions in Bloom versus Illinois, *Sheaf* versus *Schnsckenberg,* United States versus Barnett, cases which we have already cited to Your Honor previously.

The COURT: Yes, I am satisfied personally that the Court is not limited to that minimum fine of $500 insofar as the defendant unions are concerned.

If I am wrong, I will gladly—be glad to acknowledge it if the upper court so rules.

Mr. POOLE: Your Honor understands we are not [2736] challenging the power of the Court in a contempt case to impose a substantial fine. We are talking about the power of the Court as limited by its denial for a demand for a jury trial. That's what our position is.

The COURT: I understand your position perfectly.

Mr. POOLE: Thank you.

The COURT: And the record will show that I denied your request.

Mr. POOLE: Thank you.

Mr. VAN BOURG: Your Honor, on behalf of Local 70, we, of course, join in the request and the motion and request a ruling on the record.

The COURT: The motion is denied.

APPENDIX F

[caption omitted]

Order Re: Reimbursement of Costs and Expenses

April 19, 1971

SWEIGERT, J.

Roy O. Hoffman, Regional Director of the Twentieth Region of the National Labor Relations Board, herein called the Board, having petitioned this Court for an Order to Show Cause why respondents San Francisco Typographical Union No. 21, International Typographical Union, AFL–CIO (herein called Respondent Local 21), its officers and agents, and John DeMartini (herein called Respondent DeMartini), its Vice President, and Don Abrams (herein called Respondent Abrams), its Organizer; Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 70), its officers and agents, and James R. Muniz (herein called Respondent Muniz), its President; Brotherhood of Teamsters & Auto Truck Drivers Local No. 85, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (herein called Respondent Local 85), its officers and agents, and Timothy J. Richardson (herein called Respondent Richardson), its Business Manager and Recording Secretary; and International Longshoremen's and Warehousemen's Union, Local No. 10 (herein called Respondent Local 10), and its officers and agents; herein jointly and severally referred to as

respondents, should not be adjudged in civil contempt of orders of this Court entered on February 13, 1970 and April 28, 1970, and for other civil relief, and the petitioner having further requested this Court to institute, *sua sponte,* criminal contempt proceedings against said respondents, and each of them, and an order of this Court having been executed on October 19, 1970 requiring said respondents to appear before this Court on October 23, 1970, and show cause, if any there be, why they, and each of them, should not be adjudged in civil contempt of this Court as prayed, and to answer the petition filed herein, and further requiring said respondents to personally appear before the Court and show cause, if any there be, why they, and each of them, should not be adjudged in, and punished for, criminal contempt; and said respondents having appeared personally and by council, and the aforesaid matters having come on to be heard by this Court commencing on October 23, 1970, and during the course of these proceedings, petitioner having amended his petition to delete the name of Henry Montano as a respondent; and full opportunity having been afforded to all parties to offer testimony, evidence, exhibits, and arguments, and the Court, after consideration of all the testimony, evidence, exhibits, and arguments offered, having on December 24, 1970, issued its Order and Adjudication in Criminal Contempt as to Respondent Local 21, Respondent Local 85, Respondent Local 70, Respondent Abrams, Respondent Richardson and Respondent Muniz, and on the same date having issued its Order and Adjudication in Civil Contempt as to all the respondents; and on January 21, 1971, this Court having made and entered Findings of Fact and Conclusions of Law Re: Criminal Contempt Proceedings supplementary to and *in extenso* of the December 24, 1970 Order and Adjudication in

Criminal Contempt; and on January 22, 1971, this Court, having afforded all the respondents additional opportunity to offer evidence, testimony, exhibits and argument on the civil contempt proceedings, and Respondent Local 10 having requested an opportunity to present additional evidence, this Court having set aside the December 24, 1970 Order and Adjudication in Civil Contempt as to Respondent Local 10 for such purpose, and having received and considered the additional evidence offered by Respondent Local 10; and upon consideration of such additional evidence, and the entire record in this case, the Court having reaffirmed its Order and Adjudication in Civil Contempt of December 24, 1970 as to all the respondents, and supplementary to and in *exteno* of such order, having on January 28, 1971 made and entered its Findings of Fact and Conclusions of Law Re: Civil Contempt Proceedings; and, pursuant to this Court's Order and Adjudication in Civil Contempt of December 24, 1970, petitioner having on February 11, 1971 filed his Statement of Costs and Expenses and having requested an order directing respondents to reimburse the Board for such costs and expenses; and on January 26, 1971, January 28, 1971, and February 11, 1971, the Charging Party in the proceedings before the Board, California Newspapers, Inc., d/b/a Independent Journal (herein called the Charging Party), Lucky Stores, Inc., Arden-Mayfair, Inc., Purity Stores, Inc., Cala Foods, Inc., and United Markets, Inc. (herein collectively called Food Employers) and the City of San Rafael, having filed with the Court petitions for the imposition of compensatory fines, and the matter of the reimbursement of the Board for costs and expenses and the imposition of the aforesaid fines having come on for hearing on February 19, 1971, and March 26, 1971, and all parties having been afforded full op-

portunity to present evidence and to argue on the matters, and the Court being duly advised in the premises, it is hereby

ORDERED, ADJUDGED AND DECREED that petitioner's request for reimbursement, as amended on the record at the hearing on March 26, 1971, be, and it hereby is, allowed, but only in the sum of $21,208.15, that said sum reflecting the deduction from the total claimed by petitioner of $167.11, representing the cost of automobile tires of a deputy United States marshal allegedly slashed in the course of making service of process; it is hereby further

ORDERED, ADJUDGED AND DECREED that the said sum of $21,208.15 shall constitute a judgment against Respondent Local 21, Respondent Local 70, Respondent Local 85, and Respondent Local 10, and against each of them, and that the said respondent, jointly and severally and equally and entirely, shall be, and are, obligated to discharge the same; it is further

ADJUDGED AND DECREED that the costs and expenses hereinabove awarded to petitioners, or incurred in the course of the investigation, preparation, presentation and prosecution of the criminal as well as the civil contempt proceedings herein involved, equally and entirely, and by virtue of the record in the criminal contempt proceedings, by agreement of the parties and by order of the Court, having been made a part of the record in the civil contempt proceedings, are chargeable entirely to the civil proceedings; it is further

ORDERED, ADJUDGED AND DECREED that respondents pay to petitioner within 30 days from the date of this order the amount hereinabove awarded and that, in the event such payment is not made, attachment issue against Respondent Local 21, Respond-

ent Local 70, Respondent Local 85 and Respondent Local 10; it is further

ORDERED, ADJUDGED AND DECREED that the petitions of the Charging Party, of the City of San Rafael, and of the Food Employers be, and they hereby are, denied, without prejudice to the rights of the said parties to institute appropriate proceedings under the provisions of 29 U.S.C. Section 187, or any other provision of law; it is further

ORDERED, ADJUDGED AND DECREED that respondents herein, and each of them, shall fully comply with all the terms and provisions of subparagraphs (b) and (c) of the Order and Adjudication in Civil Contempt of this Court of December 24, 1970, and that respondents, and each of them, shall file with the Clerk of this Court and serve copies thereof on petitioner within 15 days from the date of this order, a sworn statement showing in detail the steps taken by respondents to comply with this Court's said order; it is further

ADJUDGED AND DECREED that this Court shall, and it hereby does, reserve the power to require payment by respondents of any further costs and expenses which may hereafter be incurred by petitioner in connection with these or any appellate court proceedings.

DATED AT San Francisco, California, this 19th day of April, 1971.

W. T. SWEIGERT,
United States District Judge.

APPENDIX G

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are as follows:

> SEC. 8. (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> * * * * *
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> * * * * *
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person * * *. *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;
>
> * * * * *
>
> *Provided further*, That for the purposes of this paragraph (4) only, nothing contained in

such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

* * * * *

SEC. 10. (h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U.S.C., Supp. VII, title 29, secs. 101–115).

* * * * *

(*l*) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of pargraph (4) (A), (B), or (C) of section 8(b), or section 8(e) or section 8(b)(7), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a

complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further,* That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: * * * Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further,* That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. * * *

Section 11 of the Norris-LaGuardia Act, 47 Stat. 72, repealed by 62 Stat. 862, provided:

> In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

U.S. GOVERNMENT PRINTING OFFICE: 1974